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STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
DOCKET NO.

IN THE MATTER OF	:	
	:	
ALBERT F. JOHANN, Jr., D.M.D.	:	Administrative Action
	:	
LICENSED TO PRACTICE DENTISTRY	:	FINAL DECISION AND ORDER
IN THE STATE OF NEW JERSEY	:	
	:	

This matter was opened to the New Jersey State Board of Dentistry ("Board") upon the filing of an Order to Show Cause and Complaint of Robert J. Del Tufo, Attorney General of New Jersey, by Kathy Rohr, Deputy Attorney General, against Albert F. Johann, Jr., D.M.D. (hereinafter "respondent"). The Complaint filed on September 2, 1992, alleged in Counts I and II that respondent failed to comply with the Board's repeated demands for the patients records of K.M., a minor and S.F. Both Counts alleged that said conduct constituted repeated acts of negligence, professional misconduct and a failure to comply with the provisions of regulations administered by the Board in violation of N.J.S.A. 45:1-21(d), (e) and (h) respectively.

The respondent failed to file a formal answer to the allegations set forth in the complaint but did submit a letter dated September 20, 1992 admitting that he had used poor judgment in failing to respond to the Board in a timely manner and stating that he had made arrangements with K.M.'s parents to refund her money.

A hearing in this matter was held on November 4, 1992. Deputy Attorney General Kathy Rohr appeared on behalf of the

complainant and Dr. Johann appeared pro se. The respondent was advised of his right to be represented by counsel during the course of these proceedings but he stated that it was his intention to proceed without counsel and present his own defense.

D.A.G. Rohr introduced the following documents into evidence without objection from the respondent:

- S-1 Letter dated March 31, 1992 from L.M. and J.M. to Agnes Clarke, Executive Director of the Board of Dentistry concerning their complaint about Dr. Johann's dental treatment of their daughter.
- S-2 Letter dated April 13, 1992 from Agnes Clarke to Dr. Johann stating that the Board had received a complaint and requesting that Dr. Johann respond to the complaint and forward the requested documents
- S-3 Letter dated May 11, 1992 from Agnes Clarke to Dr. Johann designated as a second request of the information requested by the letter dated April 13, 1992. The letter was sent by certified mail.
- S-4 Copy of Subpoena dated June 9, 1992 signed by Kathy Rohr, D.A.G. and addressed to Dr. Albert Johann directing production of the patient records of K.M. and memorandum from Enforcement Bureau to Board of Dentistry stating the original subpoena and affidavit of service was given to the Board of Dentistry.
- S-5 Letter dated January 12, 1991 from S.F. to the Board concerning her complaint about Dr. Johann's dental treatment.
- S-6 Letter dated January 30, 1991 from Agnes Clarke to Dr. Johann stating that the Board had received a complaint and requesting that Dr. Johann respond to the complaint and forward the requested documents.
- S-7 Letter dated February 22, 1991 from Agnes Clarke to Dr. Johann designated as a second request of the information requested by the letter dated January 30, 1991. The letter was sent by certified mail.
- S-8 Letter dated April 17, 1991 from Agnes Clarke to Dr. Johann designated as a second request of the information previously requested, however, the letter did not state the date of the prior request. This letter was sent by certified mail.

- S-9 Hand written letter dated April 16, 1991 from Dr. Johann to the Board stating that the dental records of S.F. were enclosed and explaining the problems in treating S.F. Annexed to the letter was the patient's General Health History and a list of Services Rendered consisting of three pages.
- S-10 Letter dated June 6, 1991 from Agnes Clarke to Dr. Johann requesting a complete itemization of all fees charged and paid for the patient S.F.
- S-11 Copy of Subpoena dated November 1991 signed by Kathy Rohr, D.A.G. addressed to Dr. Johann directing him to produce the patient records and a copy of itemized fee statement pertinent to this treatment, with copies of any pretreatment determinations and all insurance claim forms of S.F.
- S-12 Letter dated January 9, 1992 from Agnes Clarke to Dr. Johann requesting a complete itemization of fees charged and paid concerning the patient S.F. Annexed to the letter is a copy of the letter with a copy of the receipt for certified mail xeroxed on top of the letter.

Agnes Clarke, Executive Director of the Board testified that she was the custodian of records for the Board and that despite her letters to Dr. Johann beginning on April 13, 1992 requesting documents, the Board had still not received any information regarding fees, payments or Medicaid records for S.F. She further testified that the Board had still not received any of the requested records regarding K.M. despite her letters to Dr. Johann beginning on January 30, 1991.

Dr. Johann testified on his own behalf that after receiving the complaint, he had instructed his receptionist to send the requested documents to the Board's office. He further testified that he had no proof of mailing, had not made an additional copy of the records for himself and had not brought copies of any documents to the hearing because he had assumed that the Board had received the copies that he had mailed. Dr. Johann explained that he had made many poor decisions in the last few years and that he was behind in all of his work. He

further stated that he had been refunding money to the parents of K.M. but that he had not brought any of the cancelled checks to the hearing.

After the testimony concluded the Board received notification that the Board office had received documents that day from Dr. Johann. Dr. Johann then introduced the documents into evidence without any objection.

R-1 Letter, undated, stamped by Board received on November 4, 1992 from Dr. Johann.

R-2 Treatment records and one x-ray for K.M.

Dr. Johann then testified that he had personally mailed these documents and did not check whether all of the documents requested by the Board had been included in the mailing.

The Board finds that the respondent's failure to comply with the Board's repeated demands for patient records as alleged in Counts I and II of the complaint constitute repeated acts of negligence, professional misconduct and a failure to comply with the provisions or regulations administered by the Board in violation of N.J.S.A. 45:1-21(d), (e) and (h) respectively.

The Board having considered the entire record in this matter and the Board having considered the testimony of the respondent and the documents entered into evidence, and the Board finding that good cause exists for the entry of the within Order;

IT IS ON THIS 3rd. DAY OF March , 1993

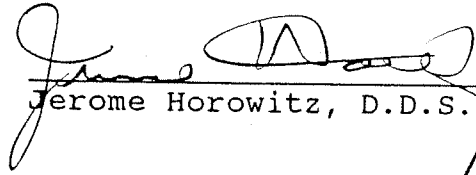
HEREBY ORDERED NUNC PRO TUNC THAT:

1. Respondent's license will be suspended on Friday, November 6, 1992 at 4:00 p.m. unless the following documents are hand delivered to the office of the Board of Dentistry, 124 Halsey Street, 6th floor, Newark, New Jersey: copies of all insurance forms and vouchers, all Medicaid forms and vouchers for S.F. and K.M.; any additional clinical records, x-rays and copies of financial ledgers relating to S.F. or K.M.; and copies of all cancelled checks representing repayment to the K.M.'s parents. The Respondent's license suspension will continue until the above described documents are produced.
2. Respondent is hereby assessed a civil penalty of \$1,000.00 for the violations set forth in Count I and II of the Complaint. Said civil penalty shall be submitted to the Board by certified check or money order made payable to the State of New Jersey, at 124 Halsey Street, 6th floor, Newark, New Jersey 07102 within ten days of the receipt of this Order.
3. Respondent is hereby assessed the costs to the State for this proceeding in the amount of \$383.90 consisting of \$226.60 for the transcript and \$157.30 for the appearance of the court reporter. Said costs shall be submitted to the Board by certified check or money order made payable to the State of New Jersey, at 124 Halsey Street, 6th floor, Newark, New Jersey 07102 within ten days of the receipt of this Order.

4. Respondent is hereby reprimanded for failing to obey subpoenas issued on behalf of the Board of Dentistry and for failing to timely produce patient records.

NEW JERSEY STATE BOARD OF DENTISTRY

By:


Jerome Horowitz, D.D.S., President